

Business Concerns Regarding the "Gay Rights" Issue

Background

The business community in the United States has played a critical role in protecting and expanding civil rights for qualified minorities. As a result, Americans of diverse ethnic origin now enjoy a greater level of economic opportunity than ever before. In turn, both employers and employees benefit from the dynamics of ethnic diversity in the marketplace.

However, a new definition of "minority" has crept into the civil rights arena during the last two decades. Seven states and more than 90 cities, counties and municipalities in America now prohibit discrimination based on "sexual orientation." By so doing, these government entities grant protected class status to a group of individuals whose identity is derived solely from their sexual behavior or desires — primarily homosexuals. These laws, which grant extraordinary status to what amounts to, not a true ethnic minority, but a **special interest group**, may adversely affect businesses in several ways.

Legal Costs

- * In 1991, a California Superior Court ordered Shell Oil to pay \$5.3 million for wrongful discharge of Jeffrey Collins, a homosexual manager. Collins was terminated when his supervisors discovered a memo he wrote on an office computer advertising an off-the-job "safe-sex" party for gay men. The court ruled that Collins' memo was "political activity" protected under California Supreme Court precedent.
- * In 1982, the Christian Science Monitor discharged a lesbian because of her sexual orientation. Though the Massachusetts Supreme Court ruled that the Monitor had grounds to terminate based on religious interests, they have allowed the lesbian to pursue tort damages. The Monitor has declined to reveal the amount of their escalating legal expenses, for fear of encouraging other suits.

Resolving claims of discrimination based on sexual orientation can prove costly. If an employer is found guilty, penalties can be exorbitant. Under state or municipal "gay rights" ordinances, an employer charged pays not only for its own defense, but, through taxation, for its own prosecution. An employer eventually cleared of discrimination charges may still face substantial attorneys fees in addition to time and inconvenience.

*The above cases reveal, however, the extent to which homosexuals are already protected from wrongful discharge under **tort law** — not because of their homosexuality, but on the basis of exemplary employment. But legal hazards arising from "sexual orientation" protection would also be compounded by the following complications:*

(Over, please...)

Disciplinary Actions

- * Julie Brienza, a former Supreme Court reporter for United Press International, was terminated in 1991 when her supervisors learned that Brienza used UPI's time, credentials and resources while writing a free-lance story for a gay newspaper. Brienza has filed a \$12 million suit alleging "sexual orientation discrimination."

The Brienza and Shell Oil cases raise serious concerns about limitations placed on employers regarding disciplinary actions. How will sexual orientation make itself known (and establish for certain its identity) in the workplace? Will employers be prohibited from taking normal disciplinary actions?

Wrongful Discharge

- * Two gay men, a lesbian and a woman who believes she was perceived to be a lesbian, are suing San Francisco law firm Pettit and Martin, alleging sexual orientation discrimination after they were laid off from their jobs as legal secretaries. The firm says they dismissed the plaintiffs **and five other employees** due to a "downturn in staff requirements" in 1991.
- * Homosexual Daniel Coulter is suing Julia Child's American Institute of Wine and Food for \$3 million, alleging sexual orientation discrimination. Institute co-founder Richard Graff asserts that Coulter was not selected because his professional background did not meet the needs of the post.

Unlike age, gender and ethnicity, sexual orientation is not readily apparent. How can an employer know if the prospective employee is homosexual? Sexual orientation discrimination claims have been unfairly used by aggravated employees.

Affirmative Action

- * While some "gay rights" laws explicitly or by clear provision include affirmative action for homosexuals (e.g. the proposed Colorado Springs "Human Rights" ordinance, and Boulder, Colorado's "gay rights" ordinance), implicit obligations arise from all "gay rights" laws when these are coupled with other state and federal anti-discrimination statutes.

Granting sexual orientation special protected class status raises questions of affirmative action obligations.

Right of Refusal

- * In 1984, a Los Angeles Superior Court found a restaurateur guilty of sexual orientation discrimination because he refused to seat a lesbian couple in an intimate, curtained dining booth reserved for "romantic evenings." The owner was fined \$500 and ordered to pay the plaintiffs' attorneys fees of \$27,000.
- * In Pittsburgh, Pennsylvania, two homosexual men have recently filed suit against a radio station that refused to play their song dedication to one another on the air.
- * Numerous restaurants in Madison, Wisconsin, have been sued as a result of deliberately provocative "kiss-ins" by lesbian and homosexual couples since passage of a "gay rights" ordinance there.

The right to refuse business services is unreasonably encumbered by sexual orientation laws.

(Next page, please...)

Employee Morale

- * According to a recent Time/CNN poll, a majority of Americans still hold negative opinions of homosexuality. Most employees would find it intolerable to be an object of sexual attraction for a member of the same sex.

Sexual tension in the workplace lowers morale, yet would be legally sheltered from remedy by "gay rights" laws.

Health Considerations

- * Because of their high degree of sexual promiscuity, homosexuals represent a serious health concern for employers. According to a study published in the New England Journal of Medicine, the average homosexual has between 20-106 different sexual partners each year. As a result, homosexuals have exceptionally high rates of gonorrhea, syphilis, hepatitis A and B, cytomegalovirus, amoebic bowel disease, herpes and AIDS. New strains of tuberculosis, largely incubated in the bodies of AIDS sufferers, and transmittable through coughs or sneezing, are now virtually incurable.
- * According to one study, the national average for AIDS-related health care costs from infection to death is \$85,333. According to the Journal of Certified Life Insurance Underwriters, March 1992, the estimated national cost of health insurance for AIDS cases by 1995 will be \$17 billion.
- * Life insurance mortality tables estimate that, out of a standard group of 1,000 persons aged 34 who are in good health, 7.5 will die over the next seven years from any causes. From a similar group who are infected with the AIDS virus, 200 deaths would be expected — assuming only 20% go on to develop the disease. That is a mortality rate **26 times higher** than the average. But, barring soon discovery of a cure, every HIV-infected person will eventually die of AIDS. The estimated cost of AIDS-related claims from current in-force life insurance by 1995 will be \$25 billion.

Employee absenteeism and retraining alone will add considerably to employers' costs of doing business.

(Paid for by Colorado for Family Values. Will Perkins, Executive Board Chairman, Kevin Tebedo, Director.)

